

**Zoning Board of Appeals  
Minutes  
July 18, 2006**

**Members Present**

Barry Silverstein-Chairman  
Maureen Kangas-Vice Chairman  
Ronald Critelli  
April Callahan-Alternate

**Members Absent**

Lynne Raver  
MaryAnn Leenig  
Marc Breimer-Alternate

**Other Officials Present**

Janis Gomez Anderson, Esq. – ZBA Attorney  
Edward Peters – Deputy Building Inspector

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Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance requests were the Town Board, Town Planning Board, Dutchess County Department of Planning, The Interim Zoning Administrator and the surrounding property owners.

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The meeting of the Zoning Board of Appeals was called to order at 7:03 pm by the Vice-Chairman. She made announcements regarding the no smoking policy and the emergency exits and fire procedures. She read the procedures for the ZBA Public Hearings.

Vice-Chairman Kangas announced that the Chairman was present for the meeting, but was suffering from laryngitis and relinquished his authority for this meeting to her.

Vice-Chairman Kangas announced that Alternate Member April Callahan was on the Board with full voting rights.

Vice-Chairman Kangas called for comments or corrections to the minutes of the June meeting. Hearing none, she called for a motion to accept the minutes as written.

Barry Silverstein made the motion to accept the minutes as written from the June 20, 2006 meeting.

April Callahan seconded.

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

April Callahan – Aye

**Vote:**

ZB05-007, Robert & Kimberly Stanley

Ronald Critelli made the motion to Grant the variance request

Barry Silverstein seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

April Callahan – Aye

**Old Business**

**Continued Public Hearing for:**

Grid Number: 5953-07-711848      Address: 21 Victoria

Application Number ZB06-006, submitted by Rick & Donna Wasylchak, requesting a 45.80ft variance, creating a 4.5ft rear yard setback where 50ft is the minimum and a 21ft variance, creating a 19ft side yard setback where 40ft is the minimum in an R2A Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Janis Anderson advised the Board that at the prior meeting the application was revised to include the lot size and lot coverage. The Applicants provided the deeds needed to complete the application. The property has been a single lot that predated zoning.

The Vice-Chairman called for a motion to Close this Public Hearing

Barry Silverstein made the motion to Close the Public Hearing

Ronald Critelli seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

April Callahan – Aye

**Vote:**

ZB06-006 Wasylchak,

Ronald Critelli made the motion to Grant the variance request

April Callahan seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

April Callahan – Aye

Robert and Kimberly Stanley entered the meeting at this point and the Vice-Chairman took a moment to advise them that the ZBA had voted in their favor and granted their variance request.

**New Business**

**Appeal Number 2**

Grid Number: 5953-07-709842      Address: 19 Victoria Lane, Beacon

Application Number ZB06-008, submitted by William & Catherine Eisler, requesting a 15ft variance creating a 25ft side yard setback where 40ft is the minimum and a 45ft variance creating a 5ft rear yard setback where 50ft is the minimum to legalize an existing deck. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Vice-Chairman Kangas read communications from the following:

DC Department of Planning citing this as a matter of local concern

Town of Fishkill Planning Board citing this as a matter of local concern

Donna & Cecil Thomas, Victoria Lane, no objection to the deck

Bonnie King, Victoria Lane, no objection to the deck

William & Catherine Eisler presented to the Board. Mrs. Eisler stated that when they built the deck they didn't realize that they needed a permit. They originally planned to live in the house for several more years, but now are considering a move to Florida upon Mr. Eisler's retirement.

Vice-Chairman Kangas asked if they originally had a deck. Mrs. Eisler advised that they had a small deck, which they removed and built the current one.

Vice-Chairman Kangas called for questions from the Board.

Janis Anderson asked for clarification of the variances needed. She asked how far the deck was from the left side lot line. Mrs. Eisler stated that it was 16ft. The rear yard is 3.5ft. Ms. Anderson asked how the 17% was calculated. Mrs. Eisler advised that someone did it for her. Ms. Anderson advised that the side yard variance requested should be a 24ft

variance for a 16ft side yard setback and in addition a 30ft variance creating a 20ft front yard setback.

Vice-Chairman Kangas called for questions or comments from the Floor. None voiced. Barry Silverstein commented that, at no fault to the Applicants, the application may need more detailed drawings.

Barry Silverstein commented that the Public Hearing should be adjourned to give the Applicants an opportunity to correctly measure the distances for the variances. He suggested that as a stipulation, as with the previous application, if the Board Members are in favor, they will vote on it next month.

Janis Anderson suggested that the Applicants resubmit the first page of the application with the corrected numbers on it.

Vice-Chairman Kangas advised the Applicants that they may consider bringing someone with them to the next meeting to present to the Board.

Vice-Chairman Kangas made the motion to Adjourn this Public Hearing

Barry Silverstein seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

April Callahan – Aye

### **Appeal Number 3**

Grid Number: 5955-04-893243      Address: 11 Van Ness Rd

Application Number ZB06-009, submitted by Mildred Mammano, requesting a 14ft variance creating a 16ft read yard setback where 30ft is the minimum required to legalize an existing deck. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Vice-Chairman Kangas read communications from the following:

DC Department of Planning citing this as a matter of local concern

NYS DOT stated that they see no impact to the NYS right-of-way

Town of Fishkill Planning Board citing this as a matter of local concern

Gerald & Barbara LaColla, no objection to the deck

Linda Fisher, Jason Fisher and Paul Ebstein Attorney for Mildred Mammano presented to the Board. Ms. Fisher stated that she is Mrs. Mammano's daughter. Her mother is 88 years old and is unable to handle her own affairs. Mrs. Mammano has been moved to a retirement home in Pennsylvania. Ms. Fisher stated that her mother lived in the Van Ness home for 58 years. They are now in the process of selling it. The buyers are also present.

She did not know why her father did not get a permit for the deck, since he got one when they installed the pool. He has since passed away.

The house was built by the Van Ness' and her father added on to it in the 1950's. The house is only 15ft from the rear property line and the garage is 7.6 feet. The deck is on the side of the house.

Ms. Fisher described the view as a park-like setting. Entrance to the deck is from the kitchen through sliding glass doors. The yard has gardens and they also have a pool. It is very private.

Ms. Fisher advised that she completed the application prior to the May deadline for the June meeting, but the application was misplaced causing a delay to the July meeting. The buyers are expecting a baby and were hoping for an early settlement to move in.

Vice-Chairman Kangas asked for verification that they were building a new deck or adding to the existing one. Ms. Fisher stated that they were not. The deck is existing and was built 30 years ago.

Paul Ebstein commented that the Applicants lost some time during their process because the Building Department had to research whether the setbacks were the same at the time the deck was built. They concluded that they were and a variance was required.

Ronald Critelli asked for verification that the zoning laws went into effect in 1962. Nancy Lecker confirmed that it was adopted in December of 1962.

Ms. Fisher presented pictures of the house and deck to the Board.

Mr. Ebstein presented a survey to the Board and stated that they may amend the variance application from 16ft to 15ft.

Mr. Critelli asked if this was her mother's original house. Ms. Fisher stated that it was. Mr. Critelli stated that he knew the house. Ms. Fisher commented that she moved her mother near her in Pennsylvania because she has Macular Degeneration and can no longer drive. She is unable to stay in Beacon.

Vice-Chairman Kangas stated that she would like to vote on this at this meeting. Barry Silverstein agreed. Janis Anderson stated that a written decision must be file and the Board must vote on the written decision. If the Board is willing to take a brief adjournment, Ms. Anderson stated that she and the secretary would complete a written decision for the Board to vote on. Ms. Anderson advised that they should complete any comments from the Board or Floor prior to the adjournment.

Vice-Chairman Kangas called for additional comments. Greg Stofnik, the buyer, commented that the survey presented was recently done and the measurements are accurate. They only want to legalize what is there.

Ms. Anderson asked the Board to verify each point of the criteria. She asked the Board if they felt there would be no change to the character of the neighborhood or detriment to the surrounding properties. All agreed and confirmed.

Ms. Anderson asked if the Board felt the Applicant would have another option to achieve their goal. All declined, noting that the only option was the removal of the deck.

Ms. Anderson stated that the variance was substantial in that it is a 50% variance going from 30ft to 15ft.

She asked if the Board felt that there was an impact on the physical environmental. None voiced.

Ms. Anderson stated that the hardship was self-created, since they built the deck 30 years ago.

Vice-Chairman Kangas made the motion to Close the Public Hearing

Ronald Critelli seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

April Callahan – Aye

Vice-Chairman Kangas made a motion to Adjourn the ZBA meeting for 15 minutes to complete a written decision.

Barry Silverstein seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

April Callahan – Aye

(This meeting was briefly adjourned at 7:44pm)

Vice-Chairman Kangas called the meeting back to order at 8:03pm. She called for the vote on the Mammano application

**Vote:**

ZB06-009, Mammano

Ronald Critelli made the motion to Grant the variance request

Barry Silverstein seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli – Aye

April Callahan – Aye

Ms. Fisher asked if she needed to obtain a building permit. Nancy Lecker stated that she may already have an open permit that was denied. She stated that after the Town Clerk signs the decision and it is filed, a copy of the decision will be given to the Building Secretary. This legalizes the setbacks on the building permit. Ms. Fisher asked what the procedure was for completing the process.

Ed Peters advised that a Building Inspector will come out to inspect the deck. He asked if the deck was attached to the house. Ms. Fisher confirmed that it was. Mr. Peters advised that one footing will have to be dug out to verify that it is 42 inches deep. Mr. Peters sat with the Fishers to give them the specifications for the hole.

**Deliberations**

ZB06-008, William & Catherine Eisler

Ronald Critelli felt that the Applicant's need to verify the measurement so that they can be documented. Vice-Chairman Kangas agreed.

Barry Silverstein stated that the application confused him.

Janis Anderson stated that she had trouble reading the drawing that was presented.

ZB06-009, Mildred Mammano

No discussion. Case closed and voted on

### **Miscellaneous**

Barry Silverstein asked if other towns allow hand-drawn sketches. He also asked what the repercussions are for an applicant who brings in something hand-drawn and lies on the distances. How is it caught? Nancy Lecker stated that the Building Inspector may catch it during an inspection. Janis Anderson stated most applications are denied due to setbacks. She also believes that most towns allow hand-drawn sketches. She will check.

Barry Silverstein reiterated his comment from past months that he does not want to see an applicant incur the expense of an engineer or architect, but someone should present actual drawings.

Vice-Chairman Kangas commented that she is uncomfortable with an elderly couple trying to present something drawn at their kitchen table during dinner. She would prefer official paperwork.

Nancy Lecker advised the Board that one thing that is being changed, as a result of the ZBA's questions, is that the Building Inspector that denies the application will be present at the meeting to answer any questions. This removes the responsibility for all applications being placed on Ed Peters as an Interim Zoning Administrator. It will now be possible to speak directly with the Building Inspector if the ZBA discovers that an additional variance is needed. Barry Silverstein stated that it will help, but he would like to see if it is possible to avoid that issue.

Barry Silverstein commented that something may need to be brought before the Town Board to place a penalty fee for applicants that come before the Board to legalize something constructed without a permit. Ronald Critelli agreed and stated that it could go as far as the applicant having to pay any back taxes owed from the time the violation began. He stated that people realize that it is easier to put something up and then come before the Board to legalize it, since for as long as he has been on the Board, it always gets approved. Barry Silverstein commented that it would be something that the Board would have to present to the Town Board either by resolution or letter. Janis Anderson commented that some towns may require back taxes or separate fees.

Vice-Chairman Kangas disagreed and stated that if something is existing, the buyer should not be responsible for it. Barry Silverstein clarified his position stating that the penalties should be paid for by the party that constructed it without a permit. The Vice-Chairman Kangas agreed.

Ronald Critelli commented that the application presented at this meeting was a perfect example. They are trying to sell the property and they admitted that they built the deck. They needed a building permit and therefore should be held accountable.

Barry Silverstein stated that the Applicants currently pay a \$250.00 to legalize an existing structure.



Mr. Silverstein commented on the denial letter. It only states that relief may be sought through the ZBA. He asked if it can be more detailed as to how to seek the relief. Nancy Lecker commented that for most applications, the inspector will inform the applicant in advance that they are being denied and will advise them to contact her or give them the ZBA application.

Vice-Chairman Kangas called for any additional business. Hearing none, she made the motion to Adjourn the ZBA Meeting

April Callahan seconded

Motion Carried

Meeting Adjourned at 8:07pm

Respectfully submitted  
Nancy Fitzgerald-Lecker  
ZBA Clerk